

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20738
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On September 5, 2007, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers) proposing additional income tax and interest for the taxable year 2004 in the total amount of \$2,224.

On November 7, 2007, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers timely filed their 2004 Idaho individual income tax return. The taxpayers reported the sale of business property on their federal income tax return. This sale was also reported on the taxpayers' Idaho income tax return. Because the property was the sale of real property, the taxpayers claimed the Idaho capital gains deduction and excluded 60 percent of the gain on the sale.

The taxpayers' 2004 return was selected for review of the Idaho capital gains deduction by the Income Tax Audit Bureau (Bureau). [Redacted]. The Bureau adjusted the taxpayers' Idaho return disallowing the Idaho capital gains deduction. The Bureau explained the adjustment stating that the property did not qualify for the Idaho capital gains deduction because the property was not Idaho property. The Bureau sent the taxpayers a Notice of Deficiency Determination, which the taxpayers protested.

The taxpayers stated they relied on their tax preparation software and the Idaho instructions when they filled out their Idaho income tax return. The taxpayers stated the software instructions for the Idaho capital gains deduction as well as the Tax Commission's instructions do not agree with the Idaho Code section that provides for the Idaho capital gains deduction. They stated they should not be responsible for these inaccuracies.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter that discussed the issue and gave them two methods for redetermining the Notice of Deficiency Determination, if they still disagreed with the audit adjustment. The taxpayers did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayers filed a resident Idaho income tax return for the tax year 2004. In 2004, the taxpayer sold rental property [Redacted]. The taxpayers claimed the Idaho capital gains deduction on the sale of the property because they held the property for more than 18 months.

Idaho Code section 63-3022H provides for a 60 percent deduction of the capital gain net income from the sale or exchange of qualified property in the determination of taxable income. In the case of the sale of real property, the property must be Idaho property and held by the taxpayer for at least 18 months. Other types of property also qualify for the deduction, but they are of no consequence to the matter at hand.

[Redacted]. Therefore, regardless of whether the taxpayers met the 18 month holding period requirement, the property does not qualify because it is not Idaho property.

The taxpayers argued that the instructions provided by the tax preparation software they used and the Tax Commission's instructions for the capital gains deduction were unclear in specifying that the property had to be located in Idaho. They stated the two instructions do not

match the Idaho Code and they should not be responsible for making sure that the instructions agree with the Code.

The Tax Commission does not agree with the taxpayers that the instructions in the tax preparation software and the Tax Commission's instruction booklet are unclear or that they do not agree with the Idaho Code. The instructions state, "the sale of qualifying (qualified) Idaho property" is eligible for the deduction. That phrase by itself describes the property as being in Idaho or belonging to Idaho. In either case, the property has a connection with Idaho and should lead one to believe the property is located in Idaho rather than some other state. The Idaho Code states that the property must have Idaho situs at the time of sale which means located in Idaho. The Tax Commission believes the term "situs" is more confusing to the general public than the term "Idaho property."

It is unfortunate the taxpayers feel they were misled by the instructions. Nevertheless, the law is clear that in order to qualify for the Idaho capital gains deduction, the property must be situated in Idaho. Therefore, the Tax Commission upholds the adjustment to the taxpayers' 2004 Idaho individual income tax return.

WHEREFORE, the Notice of Deficiency Determination dated September 5, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2004	\$1,910	\$ 368	\$2,278

Interest is computed to April 15, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.